THE CONVENTION ON CONTRACTS FOR THE
INTERNATIONAL SALE OF GOODS AND THE GENERAL
CONDITIONS FOR THE SALE OF GOODS

Early attempts to produce uniform laws concerning the international sale of goods were undertaken by the International Institute for Uniform Private Law (UNDROIT).¹ UNDROIT's preliminary draft became the basis for two documents: the Uniform Law on the International Sale of Goods (ULIS) and the Uniform Law on the Formation of Contracts (ULF).² These two documents went into effect in 1972. Due to a lack of widespread ratification, the United Nations Commission on International Trade Law (UNCITRAL), guided by criticism and comments submitted by interested governments to the United Nations Secretary-General, began to prepare a new document on the international sale of goods in 1968.³ In 1980, UNCITRAL culminated twelve years of work when its Convention on Contracts for the International Sale of Goods (Convention) was approved and opened for signature at a diplomatic conference.⁴ The Convention was drafted by a working group of fourteen countries representing a cross section of the worldwide membership of UNCITRAL.⁵

The Council for Mutual Economic Assistance (Comecon) has had General Conditions for the Delivery of Goods between Organizations of Member Countries for Comecon (General Conditions) since 1958.⁶ The Comecon effort began in 1951 with recommendations

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¹ Honnold, The Draft Convention on Contracts for the International Sale of Goods, 27 Am. J. Comp. L. 223 (1979). Although this and other articles cited refer to the 1978 draft, the final Convention is substantially the same as this draft with certain provisions rearranged. See generally 22 HARV. INT'L L. 473 (1981).
³ Honnold, supra note 1, at 225-26.
⁵ Honnold, supra note 1, at 225-26.
⁶ Comecon members are Bulgaria, Cuba, Czechoslovakia, the German Democratic Republic, Hungary, Mongolia, Poland, Romania, and the U.S.S.R. Albania retains formal membership but has been inactive since 1962. Yugoslavia is an observer. Hoya & Stein, Drafting Contracts in U.S.-Soviet Trade, 7 L. & POLY INT'L BUS. 1057, 1061 n. 18. (1975). General Condi-
by the Secretariat of Comecon. These recommendations served as optional guidelines for each Comecon member; thus, the results were highly divergent. The Permanent Foreign Trade Commission of Comecon, aided by the 1951 experience, promulgated General Conditions that were accepted as binding between Comecon countries. In 1968, the General Conditions were modified to their present form. The General Conditions unify trade law among Comecon members and emphasize ease in contract formation, preservation of contracts, and quick resolution of contract breaches.

The unification of trade law is a special concern of socialist countries, as non-market economies are vulnerable to trade fluctuations and their long range economic goals require predictability in trade.

The desire for protection against trade fluctuations and for predictability in trade led Comecon members to participate in the UNCITRAL effort. Half of the active Comecon members became signatories to the Convention. Unlike the General Conditions, which unify trade law for socialist countries only, the Convention emphasizes the coalescence of varied legal and economic systems of the world. A comparison of provisions on the formation of contracts, guarantees, and remedies for breach of contracts illustrates where the socialist concerns stand vis-à-vis prevailing world trade views.

The different concerns of the General Conditions and the Convention can be seen in provisions governing the formation of contracts. Where the General Conditions facilitate the conclusion and execution of contracts, the Convention seeks to establish general guidelines that can be used in contracts between countries from

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8 Id. at 255-56.
9 Id.
10 Id.
11 Id. at 287, 290-93, 300; Katona, supra note 6, at 254-55.
12 "Much of socialist law is concerned with carrying out an economic plan and thus is ill-suited to international trade, which inevitably reflects a market economy; uniform law for international trade ... thus meets a very special need." Honnold, The United Nations Commission on International Trade Law, 27 AM. J. COMP. L. 201, 208 (1979) [hereinafter cited as Honnold, UNCITRAL].
13 Convention, supra note 4.
14 Honnold, supra note 1, at 225-26.
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Both documents require an offer and an acceptance to form a contract. The Convention, because it does not give complete contract details, requires a "sufficiently definite" offer including both price and quantity terms. The General Conditions do not require these terms because quantity, quality, and price provisions in the General Conditions become part of any Comecon contract not originally including such details. The difference between the two documents does not reflect disagreement over the need for specificity of an offer. To the contrary, the socialist countries desired that provisions on definiteness of an offer to parallel the provisions supplied in the General Conditions be included in the Convention. The Union of Soviet Socialist Republics representatives stated that an indefinite term as to quantity or price should not be determined by anything outside the contract such as prevalent world market prices because the market mechanism is not a standard for prices in controlled economies.

According to the General Conditions, offers are not revocable unless specified otherwise. This reflects the General Conditions' focus upon enhancing formation and execution of contracts. The General Conditions soften the irrevocability of an offer by setting a thirty-day time limit for the offer. The opposite is true in the Convention, where an offer is revocable until an acceptance is sent. The Convention allows the parties to form a contract if they so desire, but does not facilitate formation. The General Conditions require acceptance of an offer to be unconditional. Contracts under the General Conditions are written to avoid disputes over differ-

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15 Hoya, Comecon, supra note 7, at 287, 290-93, 300; Honnold, supra note 1, at 225-26; Katona, supra note 6, at 254.
16 Convention, supra note 4, arts. 14, 19, 23; General Conditions, supra note 6, § 1, at 7.
17 Convention, supra note 4, art. 14. "A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes . . . the quantity and the price."
18 General Conditions, supra note 6, §§ 15, 18. Actually, there is no express term on setting prices due to the fact that socialist countries exchange goods on a fixed price basis. A split of authority exists in Comecon as to whether such a term must be set in order for a contract to be formed. Katona, supra note 6, at 238-42.
20 Id.
21 General Conditions, supra note 6, § 1, at 7.
22 Id.
24 General Conditions, supra note 6, § 1, at 7.
ing contract terms. However, some tribunals dealing with the acceptance issue have, in keeping with the purpose of facilitating contract formation, interpreted section 1 of the General Conditions to allow minor modification.\textsuperscript{25} Similarly, article 19 of the Convention requires that an acceptance not modify or limit an offer. However, if a modification is not material, the Convention specifically provides for acceptance with such minor modification.\textsuperscript{26}

Once an offer and acceptance are made, the General Conditions require the contract to be in writing.\textsuperscript{27} This is a reflection of the inherent demands of highly centralized governments that monitor and control all subordinate trade activities.\textsuperscript{28} Coordination of all transactions of lower level trade organizations is facilitated when all trade activities are embodied in a writing.\textsuperscript{29} Therefore, during the drafting of the Convention, Comecon countries insisted some provision be included to allow them to require contracts to be in writing.\textsuperscript{30} In response to this request, articles 12 and 96 were added to the Convention to allow any country to require a writing for contract formation, modification, or dissolution.\textsuperscript{31}

One of the most important chapters in the General Conditions is the chapter on guarantees of quality and performance of goods.\textsuperscript{32} Guarantee periods are established for various types of products, during which time the seller is responsible for the quality and performance of the goods despite the passing of risk.\textsuperscript{33} The seller is relieved of liability on a guarantee if he proves any claimed defect is caused by the buyer.\textsuperscript{34} In the interest of concluding contracts, the General Conditions specify that, in the absence of a provision in the contract, goods must be of the “usual average quality” existing in the seller’s country.\textsuperscript{35} They must conform to the intended

\textsuperscript{25} Katona, \textit{supra} note 6, at 259.
\textsuperscript{26} Convention, \textit{supra} note 4, art. 19.
\textsuperscript{27} General Conditions, \textit{supra} note 6, § 2, at 8.
\textsuperscript{28} Farnsworth, \textit{supra} note 2, at 446.
\textsuperscript{31} Convention, \textit{supra} note 4, arts. 12, 96. The articles allow a State to declare exclusion of a non-written contract when any party has his place of business in the declaring State.
\textsuperscript{32} Katona, \textit{supra} note 6, at 264.
\textsuperscript{33} General Conditions, \textit{supra} note 6, §§ 28, 29, at 20.
\textsuperscript{34} \textit{Id.} § 34, at 23.
\textsuperscript{35} \textit{Id.} § 15, at 13.
use for the goods under the contract or the usual use for such goods. To encourage settlements between buyers and sellers without resort to arbitration, the General Conditions set strict time limits for notifying sellers of any guarantee breach. The defect must be brought to the seller’s attention quickly in order that it may be remedied. Furthermore, absolute time limits for bringing guarantee claims to arbitration are set to accelerate the dispute resolution process.

Like the General Conditions, the Convention recognizes that guarantee periods can be set in contracts, and provides that the seller is liable for any breach of guarantee obligation during that period. However, the time limits for guarantee periods are not specified in the Convention because, unlike the General Conditions, the Convention does not attempt to fill contract gaps in order to ensure execution of a contract. The goods must be fit for ordinary use and any expression of implied purpose made known to the seller. This standard is the same as in the General Conditions with the exception of the provisions requiring fitness for an implied purpose. While the requirement that goods be fit for implied purposes that are made known to the contracting parties is equitable, it is contrary to the general desire of socialist countries to embody all contract provisions in writing. The requirement of giving notice serves the same purposes in the Convention as it does in the General Conditions; it allows a seller or buyer to remedy quickly and aids in rapid resolution of any problems.

The remedies provided by the General Conditions for breach of contract reflect the desire to attain speedy resolution of disputes and to encourage substantial performance of contracts. The emphasis on penalties rather than damages avoids time-consuming problems of proof. Penalties are calculated easily as a set percentage of the contract cost for each day a breach exists. In addition to the provision of penalties for breach of contract, the General Conditions encourage performance of a contract by establishing methods to perfect delivery of conforming goods. The buyer can

34 Id.
35 Id. §§ 29, 32, at 20-21; Hoya, Comecon, supra note 7, at 291.
36 General Conditions, supra note 6, §§ 36, 37, at 23; Hoya, Comecon, supra note 7, at 291.
37 Convention, supra note 4, art. 36.
38 Id. art. 35.
39 See supra notes 36-37 and accompanying text.
40 Hoya, Comecon, supra note 7, 292-93; Hoya & Stein, supra note 6, at 1077-78.
41 Id.
42 General Conditions, supra note 6, § 83, at 44.
demand completion of delivery, elimination of defects, or replacement of goods. Alternatively, the buyer can correct minor deficiencies and charge the costs to the seller. If a buyer chooses to accept deficient goods and not demand repair, the price of the goods may be reduced by the buyer proportionately.

Substantial performance is a preferred remedy in civil law countries. It is especially useful to socialist countries, which incorporate all contracts into general economic programs and need performance of contracts to meet economic goals. However, the General Conditions appear to comport with common law preferences by not providing specific relief. In reality, the conflict of laws provisions in the General Conditions have been interpreted to make the remedy of specific performance generally available. Thus, the General Conditions will allow a party to require that the breaching party fulfill its contract obligations.

In keeping further with the goal of encouraging performance of contracts, the General Conditions severely curtail rescission as a remedy. The buyer can choose to rescind a contract if contract performance is delayed more than four to six months, and the seller must return payments made. Until rescission, the buyer must seek all other available remedies and collect penalties for delay. The rescission of the contract does not provide damages for losses sustained. Only in the case of an “insuperable force” preventing performance of any contract for more than five months are both buyer and seller given the option to rescind the contract. Both parties then are relieved of liability on their contract, but no compensation for loss is allowed.

The Convention does not always seek to encourage contract performance; rather, it seeks to encourage economic efficiency and avoid harsh results. Penalties are not a remedy in the Convention; damages are available to compensate actual loss. Thus, any

45 Id. §§ 75, 81, at 40, 43.
46 Id. § 75, at 40.
47 Id. § 81, at 43.
48 Id. § 75, at 40.
49 Farnsworth, supra note 2, at 466.
50 Honnold, UNCTRAL, supra note 12, at 208; Hoya & Stein, supra note 6, at 1078.
51 Hoya, Comecon, supra note 7, at 293; Katona, supra note 6, at 274-75.
52 Hoya, Comecon, supra note 7, at 293; Katona, supra note 6, at 268.
53 General Conditions, supra note 6, §§ 85, at 45; Hoya & Stein, supra note 6, at 1085.
54 General Conditions, supra note 6, §§ 68, 70, at 37-38.
55 Id. § 70, at 37-38.
57 Convention, supra note 4, arts. 74-77. However, the General Conditions have been interpreted to provide damages in some cases. See Katona, supra note 6, at 256 n. 106, 273-75.
breach can be compensated monetarily if the non-breaching party wishes to seek damages. The Convention provisions allow correction of deficiencies in contract performance, but these provisions are not as broad as those in the General Conditions. The buyer can require substitute goods when a defect in the goods amounts to a fundamental breach. There is no allowance for self-help. As in the General Conditions, a buyer can choose to keep deficient goods and reduce the price. However, to balance any possible disparity, the seller has the right to repair the goods even if the buyer would prefer a price reduction, unless repairs would be unreasonable.

The civil law preference for specific performance as a remedy, which Comecon supports, prevailed in the Convention. Despite this general emphasis in the Convention, the preference for specific performance of a contract is mitigated by concerns for economic efficiency. The Convention requires a tribunal to use the remedy of specific performance only when the laws of the tribunal country would allow such a remedy. Furthermore, the Convention grants avoidance much more easily than do the General Conditions. Although a contract cannot be rescinded for minor nonconformities, avoidance is permitted if breach occurs. Substantial detriment is required to avoid the contract. This provision helps to prevent the harsh result of allowing cancellation of a contract for minor deficiencies. The Convention does provide for the preservation of contracts by granting specific relief when nonconforming goods are tendered. However, to promote efficiency, the Convention grants avoidance of a contract for a substantial breach. This concern is not expressed in the General Conditions.

The UNCITRAL Convention, in its effort to integrate trade rules from all legal systems, reflects many of the trade concerns of Comecon countries that are expressed in the General Conditions. In the area of formation of contracts, the General Conditions meet the desires of Comecon members for specificity by requiring quality

58 Compare Convention, supra note 4, arts. 46-48, 50 with General Conditions, supra note 6, §§ 75, 81, 83, at 40-44.
59 Convention, supra note 4, art. 46.
60 Id. art. 48.
61 Id.
62 Id. art. 46; See also Michida, supra note 56, at 279-81.
63 Convention, supra note 4, art. 28.
64 Id. art. 49; General Conditions, supra note 6, § 68, at 37.
65 Convention, supra note 4, arts. 49, 64; Michida, supra note 56, at 280-81.
66 Convention, supra note 4, art 64.
67 Michida, supra note 56, at 281.
and quantity terms and contracts in writing. The Convention con-
curs in part, but also requires definite price terms. Moreover, the
Convention reflects prevailing views that a contract need not be
in writing. A compromise is provided by allowing countries to re-
quire contracts involving a party doing business within their
borders to be in writing. The area of guarantees reflects the general
agreement of all countries that sellers must provide goods or ordi-
ary quality and be responsible for their performance. The General
Conditions provide guarantee periods for all goods. The Convention
allows this practice to continue by leaving guarantee periods to
the agreement of the parties. Finally, the area of remedies reflects
a basic conflict between a desire for efficiency in trade and the
need of socialist planned economies to meet pre-established long-
term goals. The General Conditions reflect only the socialist need
in remedy provisions, requiring performance of contracts, allow-
ing avoidance only in limited circumstances, and providing penalties
as the measure of relief for breach of contract. On the other hand,
both concerns are balanced in the Convention by specific perfor-
ance, damages, and avoidance provisions.

The Convention, due to the participation of Comecon members
in its development, meets the basic concerns expressed in the
General Conditions. However, in striving to meet many diverse
needs, it does not provide the degree of detail seen in the General
Conditions. The Convention provides only basic rules to be used
in contracts for the international sale of goods. It cannot serve
the same role as the General Conditions because it leaves the details
of contracts to negotiation by the contracting parties. It can,
however, be a helpful starting point for Comecon countries in con-
tract negotiation and in the resolution of contract disputes, as it
reflects trade principles and terms acceptable to all legal systems.

H. Lalla Shishkevish